



WHISTLEBLOWER POLICY

Business owner: Enforcement, PAD Legal

FEBRUARY 2023 – Version 3.0

Contents

Policy	3
Revision history	3
Policy Statement	5
Definitions	6
Eligible whistleblower	6
Regulated entity	6
Disclosable matters	7

Policy

Name	Whistleblower Policy
Approval date	16 May 2023
Business owner	Enforcement – PAD Legal
Approved by	Executive Board
	Renée Roberts and Clare Gibney – Executive Director, Policy & Advice
	Lucinda McCann – General Counsel, Legal
Reviewed by	James Calveley – Deputy General Counsel, Legal
	Section 22 – Whistleblower Manager, Enforcement, PAD Legal
Author	Section 22 – Analyst, Enforcement, PAD Legal
Version no.	3.0
Purpose	To outline APRA’s policy on the handling of whistleblower disclosures in relation to APRA-regulated institutions

Revision history

Version no.	2.0
Authors	Section 22
Reviewed by	Renée Roberts, Lucinda McCann
Revision date	4 December 2020
Summary of changes	To reflect the change in ownership to the Investigations Team and the changes made as a result of that transition

Version no.	1.1
Author	Section 22
Revision date	28 June 2019
Summary of changes	To reflect the legislative changes that came into effect on 1 July 2019
Version no.	1.0
Author	Section 22
Revision date	29 March 2017
Summary of changes	Creation of Whistleblower Policy

Policy Statement

This Policy outlines the principles by which APRA receives and manages information ('disclosures') from whistleblowers ('**whistleblowers**') about APRA-regulated entities to ensure the handling of such information by APRA is consistent with the Corporations Act 2001 (Cth) (**Corporations Act**).

The whistleblower provisions within the Corporations Act aim to protect individuals who expose wrongdoing within regulated entities.

This Policy covers issues raised in relation to APRA-regulated entities only. It is critical that disclosures provided to APRA by whistleblowers about APRA-regulated entities are handled appropriately, particularly to prevent APRA from breaching potential protections that are accorded to whistleblowers by the Corporations Act, and to capture the potential value of such disclosures to assist in the prudential supervision of an APRA-regulated entity.

In relation to the management of whistleblower disclosures, APRA is committed to:

- a consistent and coordinated approach across APRA to the management of whistleblower disclosures;
- accurately recording each whistleblower disclosure;
- recording APRA's actions and decisions in relation to each disclosure;
- ensuring that the identity or any information that is likely to lead to the identification of the whistleblower is kept confidential; and
- managing all disclosures in a timely manner.

Definitions

For the purposes of this Policy and the accompanying Procedure, a whistleblower disclosure can be defined as being either ‘qualifying’ or ‘non-qualifying’:

- an individual will qualify for the whistleblower protections in the Corporations Act if the individual satisfies all the relevant whistleblower requirements contained in the Corporations Act. Namely:
 - the individual is an eligible whistleblower in relation to a regulated entity;
 - the individual discloses a disclosable matter;
 - the disclosure is made to an eligible recipient, which includes officers, senior managers, auditors and actuaries of the regulated entity, as well as APRA or ASIC; and
 - the disclosure does not wholly concern a personal work-related grievance.
- an individual will not qualify for the whistleblower protections if the individual does not satisfy all the requirements above, even if they claim whistleblower status.

Eligible whistleblower

Under the Corporations Act, an individual is an eligible whistleblower in relation to a regulated entity if the individual is or has been any of the following:

- an officer or employee of the regulated entity;
- a supplier of services or goods to the regulated entity, or an employee of such a person or entity;
- an associate of the regulated entity;
- a trustee, custodian or investment manager of a superannuation entity, an officer or employee of such a person or entity, or supplier of services or goods to such a person or entity (including an employee of the supplier of services or goods); or
- a relative or dependant of any of the above, or a spouse of a dependant.

Regulated entity

A regulated entity for the purposes of the Corporations Act includes:

- a company, foreign corporation or trading or financial corporation formed within the limits of the Commonwealth (to which paragraph 51(xx) of the Constitution applies);

- an ADI, general insurer, life company or authorised, or registered, NOHC or subsidiary of such an entity; or
- a superannuation entity or a trustee of a superannuation entity.

A private health insurer is not included in the definition of 'regulated entity' but may fall within the broader category of a 'company'.

Disclosable matters

For the purposes of the Corporations Act, a disclosable matter relates to information which the discloser has reasonable grounds to suspect concerns misconduct, or an improper state of affairs in relation to the regulated entity or its related body corporate. A disclosable matter may include, but is not limited to:

- failure to comply with a legal duty, most often a duty set out in legislation administered by APRA or prudential standards;
- information indicating a systemic issue;
- financial information relevant to the viability of an institution;
- conduct which may cause financial or non-financial loss to the entity or be otherwise detrimental to the interests of the entity;
- offences against, or a contravention of, a provision of prescribed Commonwealth legislation, including the *Banking Act 1959*, *Superannuation Industry Supervision Act 1993*, *Life Insurance Act 1995*, *Insurance Act 1973*, *Financial Sector (Collection of Data) Act 2001*, *Australian Securities and Investments Commission Act 2001* and Corporations Act, including instruments made under the legislation such as prudential standards;
- offences against any other law of the Commonwealth punishable by imprisonment for a period of 12 months or more;
- conduct that represents a danger to the public or the financial system;
- gross mismanagement or waste; dishonest or unethical behaviour by an individual;
- fraud or other type of criminal behaviour; or
- a deliberate concealment of any of the above.

APRA's Legal Group will make a general assessment based on the information in a disclosure, and information otherwise available to APRA, on whether the disclosure is likely to qualify for the whistleblower protections under the Corporations Act.

All disclosures in which an individual either identifies themselves as a 'whistleblower' or discloses information relevant to APRA-regulated entities will be recorded in APRA's whistleblower spreadsheet even if they are 'non-qualifying' under Corporations Act. All disclosures will be provided to the relevant Supervision team irrespective of whether the disclosure qualifies for whistleblower protections.

All APRA staff will have access to training in managing whistleblower disclosures. This is to ensure staff understand the specific requirements in receiving a whistleblower disclosure, including whistleblower protections in the Corporations Act, APRA's inability to provide external legal advice and understand APRA's processes in properly documenting and managing whistleblower disclosures.

APRA's initial response to a Whistleblower acknowledging receipt of a disclosure will advise the Whistleblower that the disclosure may be shared with ASIC, the Australian Federal Police (**AFP**) or a Commonwealth, State or Territory authority for the purpose of assisting the authority in the performance of its functions or duties.

Where APRA considers it necessary to disclose the identity of the Whistleblower, or information that is likely to lead to the identification of the Whistleblower, to a third party other than ASIC, the AFP or a Commonwealth, State or Territory authority (**Third Party**), the Whistleblower will be asked to consent to the information being disclosed. If the Whistleblower does not consent to the information being disclosed, the disclosure to the Third Party may not take place.

Where APRA considers it necessary to disclose information to a Third Party that does not identify the Whistleblower, the Whistleblower will be asked if they have any concerns regarding the information being shared with the third-party. The Whistleblower's response will be considered when determining whether information will be shared.



APRA